

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE: *BOLDT, PATRICK M.*
 AKA ABC AUTO GLASS

CHAPTER 7
BKY CASE NO. 04-44344

Debtor(s).

NOTICE OF HEARING AND MOTION OBJECTING TO EXEMPT PROPERTY

TO: Entities specified in Local Rule 9013-3.

1. Terri A. Georgen, trustee (the “Trustee”) of the bankruptcy estate of the above-named Debtor(s) moves the Court for the relief requested below and gives notice of hearing.

2. A hearing will be held on this motion by the Honorable Nancy C. Dreher, Courtroom No. 7 West, 7th Floor - United States Courthouse, 300 S. Fourth Street, Minneapolis, Minnesota on **November 3, 2004** at **10:30 a.m.**, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and delivered not later than October 27, 2004, which is seven (7) days before the hearing date, including intermediate Saturdays, Sundays and legal holidays, or filed and served by mail not later than October 22, 2004, which is ten (10) days before the hearing date, including intermediate Saturdays, Sundays and legal holidays. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, FED. R. BANKR. P. 5005 and Local Rule 1070-1. This is a core proceeding. The petition commencing this Chapter 7 case was filed on 08/04/04 and is now pending before this court.

5. This motion arises under 11 U.S.C. §522, FED. R. BANKR. P. 4003 and Local Rule 4003-1(a). This motion is filed under FED. R. BANKR. P. 9014 and Local Rules 9001-1 to 9001-6 and 9013-1 to 9013-5. The Trustee requests relief with respect to the Debtor(s)' claims for exemption.

6. The Debtor(s) have claimed a personal injury suit exempt under Minn. Stat. §550.37, subd. 22: pending personal injury case, value: \$5,000.00.

7. The Trustee objects to the Debtor(s)' claims of exemption to the extent that the personal injury claim includes pre-petition special damages for actual costs incurred as a result of such personal injuries, and punitive damages. The Trustee's objection is supported by the analysis of Minn. Stat. §550.37, subd. 22 outlined in *Medill v. State*, 477 N.W.2d 703 (Minn. 1991) and *In re Cook*, 138 B.R. 942 (Bankr. D. Minn. 1992).

WHEREFORE, the Trustee moves the Court for an order sustaining the Trustee's objection(s) to claimed exempt property and such other relief as may be just and equitable.

Dated: October 9, 2004

GEORGEN-RUNNING LAW FIRM
A Professional Corporation

/e/ Terri A. Georgen-Running
Terri A. Georgen-Running (No. 238338)
P.O. Box 16355
St. Paul, MN 55116

(651) 699-6980
(651) 292-1234 *Facsimile*

ATTORNEYS FOR THE TRUSTEE

VERIFICATION. I, Terri A. Georgen-Running, the moving party declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: October 9, 2004

/e/ Terri A. Georgen-Running
Terri A. Georgen-Running Trustee

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UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Terri A. Georgen-Running, declare that on the date indicated below, I served the following:

(1) Notice of Motion and Motion Objecting to Exempt Property; (2) Unsworn Declaration for Proof of Service; and (3) Proposed Order

upon each of the entities named below, by mail (unless otherwise indicated below) by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid, and depositing same in the post office at St. Paul, Minnesota, addressed to each of them as follows:

UNITED STATES TRUSTEE
1015 U.S. COURTHOUSE
300 SOUTH FORTH STREET
MINNEAPOLIS, MN 55415

BOLDT, PATRICK M.
AKA ABC AUTO GLASS
741 32ND AVE N
SAINT CLOUD, MN 56303-3159

ROBERT L. KALENDA
919 W. GERMAIN STREET
ST. CLOUD, MN 56301

PAMELA BOLDT
14452 GREYSTONE ROAD
COLD SPRING, MN 56320

SARAH J SHELLA STEVENS
830 W. ST. GERMAIN, STE. 309
P.O. BOX 1598
ST. CLOUD, MN 56302

And I declare under penalty of perjury that the foregoing is true and correct.

Date: October 9, 2004

/e/ Terri A. Georgen-Running

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ORDER

At Minneapolis, Minnesota, _____, 2004

The above-entitled matter came before the Court on the Objection to Claimed Exempt Property filed by the Trustee. Appearances, if any, were as noted upon the record. Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED:

That the Trustee's objection is sustained, and

The Debtor(s)' right to recover pre-petition special damages and punitive damages pursuant to a personal injury cause of action listed in the Debtor(s)' schedules and accrued as of the date of filing bankruptcy is not exempt.

NANCY C. DREHER
UNITED STATES BANKRUPTCY JUDGE